

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 352

INTRODUCER: Senators Bennett and Gaetz

SUBJECT: Inmates/Illegal or Undocumented Aliens/Deportation

DATE: February 13, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The primary intent of the bill appears to be to affect the expedited removal of incarcerated illegal or undocumented aliens to their countries of origin. The bill requires the Department of Corrections (DOC) and the Parole Commission to immediately initiate, coordinate, and establish agreements with multiple state, local, and federal authorities to implement the United States Immigration and Customs Enforcement’s Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT) program, and provides goals for this effort.

The bill also creates a control release mechanism for removal and deportation of qualified aliens, including but not limited to:

- Identification of eligible aliens.
- Voluntary waiver by the alien of administrative and judicial appellate rights.
- Establishment of a control release date (which may be a minimum of 50 percent of the alien’s sentence).
- Notice to and written acknowledgement by the alien that illegal re-entry into the United States requires the return of such aliens to state custody to complete the remainder of the alien’s sentence.
- Waiver by the alien of rights of extradition to challenge the alien’s return to the DOC and the Parole Commission (acting in it’s capacity as the as the Control Release Authority) to complete the remainder of the alien’s sentence.

The bill also requires the Parole Commission to implement a system to execute an immediate deportation order from federal immigration authorities. It specifies that control release is an

administrative function which, aside from its current use to manage the state prison system within total capacity, is used to expedite the deportation process. It further specifies that control release dates for deportation do not become void when the prison population changes. Finally, it amends present powers and duties of the Parole Commission to provide that it may extend or advance the control release date of any inmate for whom a date has been established, based on the DOC’s recommendation regarding arrangements for the transfer of the custody of the inmate pending deportation.

This bill amends section 947.146, Florida Statutes. This bill creates section 947.1461, Florida Statutes, and creates an undesignated section of the Florida Statutes.

II. Present Situation:

DOC Information Regarding “Alien Inmates”

According to DOC’s FY 2006-2007 Annual Report, an alien inmate is any inmate who is not a U.S. citizen. Immigration and Customs Enforcement (ICE) agents working in prison reception centers investigate newly admitted inmates to identify those who may be aliens. On January 31, 2009, Florida prisons held 5,316 confirmed alien inmates.

If ICE has notified DOC that they want to take an alien inmate into custody, the inmate is released into ICE custody when his or her sentence is completed. ICE may refuse to take custody of an alien inmate in some cases, such as when the alien is from a country to which he or she cannot be deported. Most alien inmates who complete their sentences in Florida prisons are released to ICE for further immigration processing, including possible deportation. These inmates are deported promptly after release from prison if they have been ordered out of the country and have no further appeals of their final deportation order.

The chart below shows the number of alien inmates released to ICE from 2000 through 2007:

YEAR OF RELEASE	EXPIRATION OF SENTENCE	COMMUNITY SUPERVISION	TOTAL
2000	433	169	602
2001	730	326	1,056
2002	793	323	1,116
2003	798	383	1,181
2004	752	348	1,100
2005	746	326	1,072
2006	754	354	1,108
2007	799	321	1,120
2008	885	337	1,222
TOTAL	6,690	2,887	9,577

Most confirmed alien inmates (62%) in prison on January 31, 2009, were serving time for violent crimes, 19 percent for drug crimes, 14 percent for a property offense, and 5 percent for other offenses. Nearly one-fourth (22 %) were in prison for murder or manslaughter.

Cuba (34.7% or 1,846 inmates), Mexico (19.7% or 1,049 inmates), and Jamaica (7.8% or 414 inmates) had the most confirmed alien inmates in Florida's state prisons on January 31, 2009.¹

DOC Reporting and Deportation of Criminal Aliens

Prior Memorandum of Understanding

In its 2008 analysis of Senate Bill 1086, DOC provided the following information regarding a former memorandum of understanding between Florida and the former Immigration and Naturalization Service to affect expedited removal of "incarcerated aliens":

In 1994, then Governor Lawton Chiles and the Immigration and Naturalization Service (INS) entered into a Memorandum of Understanding (MOU) to accomplish the expedited removal of incarcerated aliens. Apparently, this MOA was put into effect to help alleviate prison overcrowding that the state was experiencing at that time. The MOA relied on the authority of the Governor and the Florida Cabinet, sitting as the Board of Executive Clemency, to grant alien inmates conditional commutations of sentences. Criteria was established to ensure that only certain nonviolent inmates were eligible for the expedited deportation prior to the end of their sentences. INS's role in this process was to obtain final orders of deportation and to facilitate the removal of these aliens from the United States. Unlawful re-entry of these inmates upon deportation resulted in revocation of clemency and reinstatement of the original sentence. This MOU was suspended in 2004 during the Bush administration.

The Federal REPAT Program:²

Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT), otherwise known as "Rapid REPAT," is part of the ICE ACCESS (Agreements of Cooperation in Communities to Enhance Safety and Security) initiative. The program provides for early conditional release of certain alien inmates who have been convicted of non-violent offenses if they have a final order of deportation and agree not to return to the United States. The inmate must agree to waive appeal rights of his or her state conviction. In order to enter into a Rapid REPAT agreement with ICE, the state's statutes must provide for revocation of the release and confinement for the remainder of the sentence of any inmate who returns to the United States. In addition, aliens may be prosecuted under federal law that provides up to 20 years confinement for illegally reentering the United States.

Rapid REPAT is modeled after longstanding programs in New York and Arizona. In 1985 and 1995, New York implemented Conditional Parole for Deportation Only and Early Conditional Parole for Deportation Only, respectively. These parole dispositions can be granted to an alien inmate who has not been convicted of a violent felony and is subject to a final order of removal, for which the alien has waived or exhausted his or her appeal. New York requires that the inmate serve at least one-half of the minimum sentence or half of the determinate sentence, minus good time. From 1995 through 2007, 1,952 criminal aliens were released to federal custody for deportation under the New York program.

¹ All population data and statistics were provided by DOC on February 16, 2009, based on historical data and the inmate population as of January 31, 2009.

² Information in this section was obtained from ICE Rapid REPAT Fact Sheet, U.S. Immigration and Customs Enforcement, September 30, 2008.

In 1996, Arizona implemented Release to Detainers/Deportation Orders from the Arizona Department of Corrections, which authorizes the deportation of foreign-born inmates upon completion of one-half of the imposed sentence. This release is granted solely for deportation purposes to all foreign-born inmates who do not have any previous felony or sexually based convictions and have a final order of removal. Since April 2005, 1,133 criminal aliens have been removed through this program.

According to the ICE, New York realized more than \$140 million in combined savings between 1995 and 2007 as a result of its program. Arizona has saved more than \$13 million in detention costs since April 2005.

Two jurisdictions have entered into ICE Rapid REPAT agreements since the program was initiated in 2008. Puerto Rico entered into the first ICE Rapid REPAT agreement on July 31, 2008. It is estimated that between 50 and 60 non-violent aliens will qualify for Rapid REPAT each year, saving Puerto Rican taxpayers approximately \$2.5 million annually. Rhode Island signed the second ICE Rapid REPAT agreement August 20, 2008.

Control Release

Section 947.146, F.S., creates the Control Release Authority (CRA), which is composed of members of the Parole Commission. The CRA is required to implement a system for determining the number and type of inmates who must be released into the community under control release in order to maintain the state prison system between 99 and 100 percent of its total capacity as defined in s. 944.023, F.S. No inmate has a right to control release, which is an administrative function solely used to manage the state prison population within total capacity. An inmate may not receive an advancement of his or her control release date by an award of control release allotments for any period of time before the date the inmate becomes statutorily eligible for control release or before the subsequent date of establishment of the inmate's advanceable control release date.

Pertinent to the bill, s. 947.146(3)(a)-(m), F.S., provides that inmates who are ineligible for control release are inmates who are parole eligible or inmates who:

- Are serving a sentence that includes a mandatory minimum provision for a capital offense or drug trafficking offense and have not served the number of days equal to the mandatory minimum term less any jail-time credit awarded by the court;
- Are serving the mandatory minimum portion of a sentence enhanced under s. 775.087(2), F.S.,³ or s. 784.07(3), F.S.⁴;
- Are convicted, or have been previously convicted, of committing or attempting to commit sexual battery, incest, or any of the following lewd or indecent assaults or acts: masturbating in public; exposing the sexual organs in a perverted manner; or nonconsensual handling or fondling of the sexual organs of another person;

³ This provision, which is part of the statute popularly known as "10-20-Life," provides for penalty enhancements based on the possession or discharge of a firearm or destructive device.

⁴ This provision provides for enhanced penalties based on possession of a firearm, etc., during the commission of a battery on a law enforcement officer or other specified person.

- Are convicted, or have been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, or aggravated battery, and a sex act was attempted or completed during commission of such offense;
- Are convicted, or have been previously convicted, of committing or attempting to commit kidnapping, burglary, or murder, and the offense was committed with the intent to commit sexual battery or a sex act was attempted or completed during commission of the offense;
- Are convicted, or have been previously convicted, of committing or attempting to commit false imprisonment upon a child under the age of 13 and, in the course of committing the offense, the inmate committed aggravated child abuse, sexual battery against the child, or a lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;
- Are sentenced, have previously been sentenced, or have been sentenced at any time under s. 775.084, F.S.,⁵ or have been sentenced at any time in another jurisdiction as a habitual offender;
- Are convicted, or have been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, aggravated battery, kidnapping, manslaughter, or murder against an officer, a state attorney or assistant state attorney; or against a justice or judge of a court described in Art. V of the State Constitution; or against an officer, judge, or state attorney employed in a comparable position by any other jurisdiction;
- Are convicted, or have been previously convicted, of committing or attempting to commit murder in the first, second, or third degree under s. 782.04(1), (2), (3), or (4), F.S.,⁶ or have ever been convicted of any degree of murder or attempted murder in another jurisdiction;
- Are convicted, or have been previously convicted, of DUI manslaughter under s. 316.193(3)(c)3., F.S., and are sentenced, or have been sentenced at any time, as a habitual offender for such offense, or have been sentenced at any time in another jurisdiction as a habitual offender for such offense;
- Are serving a sentence for an offense committed on or after January 1, 1994, for a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), (4), (5), or (6), F.S.,⁷ and the subtotal of the offender's sentence points is multiplied pursuant to the former sentencing guidelines or the Criminal Punishment Code;
- Are serving a sentence for an offense committed on or after October 1, 1995, for a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), (4), (5), (6), (7), (8), or (9), F.S.,⁸ and the subtotal of the offender's sentence points is multiplied pursuant to the former sentencing guidelines or the Criminal Punishment Code;
- Are serving a sentence for an offense committed on or after January 1, 1994, for possession of a firearm, semiautomatic firearm, or machine gun in which additional points are added to the subtotal of the offender's sentence points pursuant to the former sentencing guidelines or the Criminal Punishment Code; or

⁵ This statute provides for enhanced penalties for certain repeat or habitual offenders.

⁶ These provisions relate to various first, second, and third degree murder offenses.

⁷ These provisions relate to enhanced penalties for specified crimes committed against law enforcement officers and other specified persons.

⁸ Id.

- Are convicted, or have been previously convicted, of committing or attempting to commit manslaughter, kidnapping, robbery, carjacking, home-invasion robbery, or a burglary under s. 810.02(2), F.S.⁹

III. Effect of Proposed Changes:

Section 1 of the bill creates an undesignated section of the Florida Statutes that requires the DOC and the Parole Commission to immediately initiate, coordinate, and establish agreements with multiple state, local, and federal authorities to implement the ICE's REPAT program. The bill provides the following goals for this effort:

- Ensure deportable aliens are not released from prison to the community.
- Reduce the number of criminal aliens incarcerated in the state prison system.
- Provide for the mandatory revocation of control release and confinement of criminal aliens who re-enter the United States and who are re-arrested in Florida.
- Allow eligible inmates to be released for deportation purposes prior to the expiration of the sentence.
- Expedite the deportation process.
- Improve information sharing procedures between the ICE and the DOC.

Section 2 of the bill amends s. 947.146, F.S., relating to the Control Release Authority (Parole Commission). It requires the CRA to implement a system to execute an immediate deportation order from federal immigration authorities. It gives the CRA authority to extend or advance the control release date of an inmate based upon arrangements for the transfer of custody pending deportation. The bill specifies that control release is an administrative function which, aside from its current use to manage the state prison system within total capacity, is used to expedite the deportation process. It also provides that control release dates for deportation do not become void when the prison population changes.¹⁰

Section 3 of the bill creates s. 947.1461, F.S., relating to control release for removal and deportation, which sets forth the following requirements:

- During the inmate reception process, the DOC must begin a procedure to identify aliens who may be eligible for deportation and to determine if deportation is feasible and in the best interests of the state. Inmates who are ineligible for control release pursuant to s. 947.146(3)(a)-(m), F.S., are also ineligible for the deportation program.
- DOC must coordinate with federal authorities to determine immigration status and eligibility for removal and to obtain the final removal order.
- The DOC must only identify aliens for removal who have voluntarily waived all administrative and judicial appellate rights in writing, and who have agreed in writing to

⁹ First degree felony burglary (in the course of committing a burglary, the offender meets any of the specified criteria, such as assault or battery on a person).

¹⁰ Section 947.146(5), F.S., presently specifies that whenever the inmate population drops below 99 percent of total capacity and remains below 99 percent for 90 consecutive days without requiring the release of inmates under this section, all control release dates become void and no inmate is eligible for release under any previously established control release date.

- fully cooperate with federal authorities to obtain valid travel documentation and facilitate removal.
- Upon acceptance into the federal deportation program, the Parole Commission must establish a control release date for the alien to be transferred into federal custody. A minimum of 50 percent of the sentence must be served prior to the control release date, which is an exception to the 85 percent requirement of s. 944.275(4)(b)3., F.S.
 - DOC must maintain exclusive control and responsibility for the custody and transportation of aliens to and from federal facilities.
 - The Parole Commission is responsible for providing notice and obtaining acknowledgement in writing that aliens eligible for deportation were given notice that illegal re-entry into the United States requires the return of such aliens to the custody of the State of Florida to complete the remainder of their court imposed sentence. The alien must also waive in writing any and all rights of extradition which would challenge the alien's return to DOC and the Parole Commission to complete the remainder of their sentence.
 - An alien cannot receive the benefits of control release awards when the federal authorities determine that his or her removal is not reasonably foreseeable.
 - DOC must compile statistics on this program including: the number of aliens who are transferred to federal custody; the number of aliens who are actually removed from the United States; the number of aliens who re-enter the United States; and the annualized cost avoidance achieved.

Section 4 of the bill provides the bill takes effect on July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None identified.

C. Government Sector Impact:

There may be an impact on the Department of Corrections in administering the REPAT program and in transportation of eligible inmate aliens to the ICE's custody for deportation. The Parole Commission may also be impacted by requirements to administer the program in its capacity as the Control Release Authority. There would be savings in housing costs to the extent that aliens are removed prior to when they would leave the correction system under current practice.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.